



**COURT OF APPEALS OF INDIANA
ORAL ARGUMENT AT A GLANCE
INDIANA UNIVERSITY SOUTH BEND
WEIKAMP HALL**



Dustin Neff v. State of Indiana

Appeal from:

Hamilton County Superior Court,
The Honorable
William J. Hughes, Judge

Oral Argument:

Wednesday, October 7, 2009
2:30 p.m. - 3:10 p.m.
20 minutes each side

CRIMINAL LAW ISSUE

Today the court will hear arguments regarding whether there is sufficient evidence to support Dustin Neff's conviction in Hamilton County for the crime of Class C felony child solicitation.

CASE SYNOPSIS

Facts and Procedural History

On April 29, 2006, twenty-year-old Neff, who resided in Anderson, Madison County, logged on to Yahoo! Instant Messenger under the screen name "stud18_20022002." He initiated an exchange of instant messages with "lizzy_izygrrl4512," whose Yahoo! profile indicated she was a twelve-year-old girl living near Indianapolis. However, "lizzy_izygrrl4512" was actually Monique Bedard, a woman living in Georgia. She volunteered for an organization called Perverted Justice, whose volunteers pose as children in Internet chat rooms and attempt to catch adults wanting to prey on children.

During the April 29, 2006 online chat, Neff asked for pictures of "Lizzy" (Bedard). He then asked if "Lizzy" would want to meet "somewhere we could hangout talk" He also said, "would u wanan [sic] kiss" Finally, using graphic language he indicated that he wanted to have sexual intercourse with "Lizzy." "Lizzy" indicated that she might be willing to meet Neff sometime in the next week.

On May 1, 2006, Neff and "Lizzy" again chatted. "Lizzy" stated that she lived in Carmel, in Hamilton County, and the two discussed meeting at a Dairy Queen in Carmel. Although Neff repeatedly asked

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“Lizzy” to send him more pictures of herself, there was no explicit sexual talk during this chat.

On May 2, 2006, Neff and “Lizzy” again chatted and this time finalized plans to meet at the Carmel Dairy Queen that evening, and afterwards to go to “Lizzy’s” apartment while her mother was gone. Neff told “Lizzy” he would be driving a black Pontiac. “Lizzy” asked Neff, “r u gonna bring condoms?,” to which Neff replied “yes.” “Lizzy” also said, “im gonna get mad if u dont get in ur car n come c me . . . u told me u wud.” Neff said, “i will,” and “Lizzy” replied, “then do it now.” Neff later said, “Do u wanna get nude together,” and asked a vulgar question regarding whether she was prepared and/or able to have sexual intercourse.

Bedard had been in contact with Carmel Police Detective John Pirics regarding her chats with Neff and informed him of the planned meeting at the Dairy Queen. At approximately 8:20 p.m., Detective Pirics observed a black Pontiac with a Madison County plate drive into a parking lot next to the Dairy Queen, stay there for a minute or two, then drive away. Detective Pirics pulled the car over, which Neff was driving. Neff admitted to police that he had driven to the Dairy Queen to meet a twelve-year-old girl he had been chatting with online.

On May 4, 2006, the State filed an information charging Neff with one count of Class C felony child solicitation, specifically alleging that the crime occurred “on or about May 2, 2006” and that it occurred in Hamilton County. It also charged Neff

with one count of Class B felony attempted child molesting, but the State later dismissed this charge. Neff waived his right to a jury trial, and a bench trial was held on December 2, 2008. During closing argument, Neff for the first time argued that Hamilton County lacked venue over the case. The Hamilton Superior Court disagreed and found Neff guilty of Class C felony child solicitation. Neff now appeals.

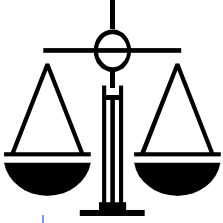
Arguments

Neff contends the State failed to prove that he solicited “Lizzy” to have sex on May 2, 2006, and that “Lizzy” prompted any sexual comments he made on that date. He also contends the charging information contained an incorrect statutory cite. Finally, he argues the State failed to prove proper venue in Hamilton County because the online chats occurred while he was in Madison County and “Lizzy”/Bedard was in Georgia. The State responds that it was entitled to rely on the chat from April 29, 2006 in addition to the one from May 2, 2006. It also contends in any event that Neff solicited “Lizzy” to have sex during the May 2, 2006 chat. Additionally, it argues Neff was not misled by any technical error in the information. Regarding venue, the State contends Neff waived this claim on appeal by waiting until closing argument to raise it for the first time. Furthermore, the State argues venue was proper in Hamilton County because Neff’s driving there was evidence of his intent to solicit “Lizzy” to have sex.

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Glossary:



Bench trial: Although criminal defendants have a right to have a jury determine whether he or she is guilty of a crime, they may choose instead to have a trial judge make that determination. If a defendant chooses a judge, the trial is called a “bench trial.”

Charging Information: A charging information (or just “information”) is a written document a prosecutor files with a trial court to begin criminal proceedings against a person. An information must include the date and location of the alleged offense, the elements of the alleged offense, and a citation to the statute that allegedly was violated. The purpose of an information is to advise the defendant of the nature of the accusation so that he or she can prepare a defense.

Child solicitation: Although there are several definitions for the crime of “child solicitation,” as alleged by the State in this case it requires an individual over 18 years old to knowingly, by use of a computer network, command, authorize, urge, incite, request, or advise a person the defendant believes is under 14 years old to engage in sexual intercourse.

Class C felony: Serious crimes in Indiana are categorized as felonies; less serious crimes are misdemeanors. There are four classes of felonies, ranging from D to A, with D being the least serious and A the most serious.

Also, murder is in a separate felony category above A in seriousness. A person convicted of a Class C felony may receive a sentence of between two and eight years of imprisonment and/or probation, and a fine of up to \$10,000.

The State: When a court refers to “the State,” it means the county prosecutor and his or her deputies at the trial court level, and on appeal it means the Attorney General and his deputies.

Venue: A criminal defendant has a right to be tried in the county where the alleged crime occurred; such a county is said to have proper “venue.” The State must prove proper venue by a preponderance of the evidence, which is less than the “beyond a reasonable doubt” standard that the State must meet for the other elements of the crime. More than one county may have proper venue if different parts of the crime occurred in different counties.

Waiver/waived: As a general rule, if a party in a trial does not make a claim of error in a timely fashion in front of the trial court, he or she cannot make that claim of error before an appellate court. It is said that the party, by not timely raising the issue before the trial court, has “waived” any claim of error on appeal.

TODAY'S PANEL OF JUDGES

Hon. Michael P. Barnes (St. Joseph County), Presiding

- Judge of the Court of Appeals since May 2000

Michael P. Barnes was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon on May 22, 2000. Judge Barnes received his B.A. from St. Ambrose College in Davenport, Iowa in 1970 and his J.D. from the University of Notre Dame Law School in 1973.

He was a Deputy Prosecuting Attorney and privately practiced law in South Bend from 1973 to 1978. In 1978 he was elected the St. Joseph County Prosecuting Attorney, a position he held for 20 years. During that tenure, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence

Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, and serves on the Board of Directors of the Friends of the St. Joseph County Juvenile Justice Center. Judge Barnes was retained on the Court of Appeals by election in 2002. He is married to Alberta Edwards Barnes, and they are the parents of two sons, Tim and John.

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

The Court of Appeals has held over 250 "on the road" cases since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Terry A. Crone (St. Joseph County)

- Judge of the Court of Appeals since March 2004

Terry A. Crone was appointed to the Court of Appeals March 8, 2004, representing the Third District. Judge Crone was raised in South Bend, and graduated from DePauw University, cum laude in 1974 and from the University of Notre Dame Law School in 1977.

Judge Crone practiced law in South Bend for nine years concentrating in areas of civil practice and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, Judge Crone was appointed Magistrate of the St. Joseph Circuit Court where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is a past President of the St. Joseph Bar Association, a former Member of the Board of Managers of the Indiana Judge's Association, a Member of the Supreme Court Committee on Character and Fitness and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference. Judge Crone is currently a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations. Judge

Crone currently serves as Chairman of the Indianapolis Bar Association Bar Leader Series. He helped found a program in South Bend to expose minority high school to the law and related fields; was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

Judge Crone is married and has three daughters.

TODAY'S PANEL OF JUDGES

Hon. Cale A. Bradford (Marion County)

- Judge of the Court of Appeals since August 2007

Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public

defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He and his wife, a full-day kindergarten teacher, have five children.

ATTORNEYS FOR THE PARTIES



For Appellant, Dustin Neff:

Steven Stoesz
Stoesz & Stoesz
Westfield

Steve Stoesz has been a practicing attorney since 1986. He is a 1981 graduate of Anderson University, where he majored in political science and history. After graduating from college, Mr. Stoesz attended Ball State University where he worked toward an M.B.A for two years before enrolling in the Indiana University – Indianapolis law school in 1983. Mr. Stoesz received his law degree from Indiana University in 1986, and his M.B.A. from Ball State in 1987.

Mr. Stoesz opened his own practice in downtown Indianapolis shortly after admission to the bar. Mr. Stoesz was lucky

enough to be asked by Robert Salyers, then President and General Counsel of the Indiana Pacers, to work with him on several sports and business-related projects. In 1996, Mr. Stoesz and his partner, his brother Tim, moved their practice to Westfield, Indiana. Today, Mr. Stoesz provides pauper counsel services for 3 courts in Hamilton County in addition to a representing private clients in both civil and criminal matters.

Mr. Stoesz has been married for more than 20 years to his wife, Jennifer, who he met in law school. They have two children who attend Carmel High School.

For Appellee, State of Indiana:

Karl Scharnberg
Attorney General's Office
Indianapolis

Karl Scharnberg is from Indianapolis, Indiana. He graduated from Marian College in 2003 with a bachelor's degree in business administration. He obtained his J.D. from Ave Maria School of Law in Ann Arbor, Michigan in 2007. Karl was admitted to the Indiana bar the following October and was employed by the Indiana Attorney General's office as a deputy shortly thereafter.

Karl is a member of the Criminal Appeals Section of the Attorney General's appellate division. He represents the State of Indiana in non-capital criminal appeals and post-conviction proceedings. This is Karl's third oral argument before the Court of Appeals.